

## ECKERD SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered by and among the United States of America, acting by and through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), the Office of Personnel Management ("OPM"), which administers the Federal Employee Health Benefits Program ("FEHBP"), and TRICARE Management Activity ("TMA"), a field activity of the Office of the Secretary of Defense, the United States Department of Defense through its General Counsel (also known as the Civilian Health and Medical Program of the Uniformed Services ("CHAMPUS")) (collectively the "United States"); Eckerd Corporation, a Florida-based subsidiary of the J.C. Penney Company, Inc., on behalf of itself and its subsidiaries and affiliates (collectively "Eckerd"); and Louis H. Mueller ("Mueller"), a private citizen. Collectively, all of the above will be referred to as the "Parties."

### I. PREAMBLE

As a preamble to this Agreement, and incorporated into and made a part of this Agreement, the Parties agree to the following:

- A. Eckerd is a Largo, Florida-based national retail pharmacy chain which owns and/or operates approximately 2650 stores in 20 states.

- B. Eckerd submitted or caused to be submitted prescription claims for payment to the Medicaid Program, 42 U.S.C. §§1396-1396v, in the Participating States, a compilation of which is attached hereto as "Attachment A." Eckerd also submitted or caused to be submitted prescription claims for payment to FEHBP, 5 U.S.C. §§ 8901-8914, and TRICARE, 10 U.S.C. §§ 1071-1110.
- C. On or about December 8, 1995, Louis H. Mueller, in his individual capacity and as a relator on behalf of the United States, filed a civil action, under seal, in the United States District Court for the Middle District of Florida, under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730. That *qui tam* suit is captioned United States ex rel. Louis H. Mueller v. Eckerd Corporation and docketed as Case No. 95-2030-Civ-T-17C (M.D. Fla.) (the "Lawsuit"). The United States and the State of Florida subsequently intervened in the Lawsuit, which was unsealed on February 4, 1998.
- D. Mueller alleges in the Lawsuit that Eckerd knowingly submitted or caused to be submitted a false or fraudulent claim for payment to the Medicaid program each time it submitted a claim for the value of a full prescription but furnished only a portion of the prescribed medication to a Medicaid customer.

E. In addition to the allegations set forth in Paragraph D, the United States also alleges that it sustained damages between January 1, 1986 and May 1, 2000 because Eckerd knowingly submitted claims to the United States to receive full payment for prescriptions that were partially-filled and delivered to customers who were participants of the Medicaid, FEHBP, and TRICARE programs. The United States also contends that it has certain administrative claims against Eckerd for this conduct under the provisions for permissive exclusion from the Medicaid and other federal health care programs, 42 U.S.C. §1320a-7(b), the provisions for civil monetary penalties, 42 U.S.C. §1320a-7a, the provisions for exclusion from TRICARE, 32 C.F.R. §199.9, and the provisions for exclusion from FEHBP, 5 U.S.C. §8902a and 5 C.F.R. Part 970. Finally, the United States also contends that Eckerd failed to properly maintain records as required under the Controlled Substance Act, 21 U.S.C. § 801, et seq., and the related regulations.

F. Eckerd denies the allegations that are set forth in Paragraphs D and E above, and denies that it is liable under the False Claims Act, 31 U.S.C. §§ 3729-3733, or any other civil, administrative, or criminal cause of action with regard to such allegations. Nothing in this Agreement or any obligation herein shall constitute an admission by

Eckerd that it has violated or breached any act, law, regulation, obligation or contract.

G. The Parties mutually desire to compromise and settle the claims set forth in Paragraphs D and E above (such alleged conduct hereinafter referred to as the "covered conduct") and, thereby, avoid the costs and disruption of continued litigation.

## II. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

### A. OBLIGATIONS OF ECKERD

1. Payment to the United States: Eckerd agrees to pay to the United States \$5,866,751.70 (the "Settlement Amount") within seven (7) days following the "Effective Date" of this Agreement (as hereinafter defined). The relator's claims for reasonable attorneys' fees, costs, and expenses under 31 U.S.C. § 3730(d) in the amount of \$250,000 shall be recovered from Eckerd separately by the relator. The terms and conditions regarding the relator's fees and costs are the subject of a separate agreement between Eckerd and the relator.
2. Manner and Method of Payment: The payment provided for in Paragraph 1 shall be by electronic transfer pursuant to instructions provided by the United States.
3. Integrity Agreement: Simultaneously herewith, Eckerd is entering into a Corporate Integrity Agreement ("CIA") with the OIG-HHS, which is attached hereto as "Attachment B." That CIA is incorporated into this Agreement by reference.

Immediately upon execution of the CIA, Eckerd will implement its obligations thereunder.

B. OBLIGATIONS OF THE UNITED STATES

4. In consideration of this Agreement, and subject to payment in full of the Settlement Amount and other obligations set forth herein, the United States shall file a Stipulation of Dismissal, with prejudice, of the Lawsuit.

5. In consideration of Eckerd's obligations under this Agreement and subject to the exceptions from release (Paragraph 9), the United States hereby releases and discharges Eckerd and its current and former shareholders, officers, directors, employees, subsidiaries, affiliates, predecessors, successors and assigns (collectively the "Released Parties") from any civil or administrative monetary claims or causes of action that the United States has or may have against any of them under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Controlled Substance Act, 21 U.S.C. § 801 et seq., and related regulations; common law, including unjust enrichment, payment by mistake, fraud, and breach of contract; or any other statute creating causes of action for civil damages or civil penalties for submitting or causing to be submitted claims to the United

States for the covered conduct alleged in Paragraphs D and E above. Additionally, in consideration of Eckerd's obligations under this Agreement, conditioned on the payment in full of the settlement amount, and subject to Paragraph 9, the Drug Enforcement Administration ("DEA") agrees to abstain from issuing an Order to Show Cause to revoke or suspend the DEA registrations of Eckerd as provided for under 21 U.S.C. § 801 et seq., and related regulations, based upon the past conduct of Eckerd as set forth in Paragraph E of the Preamble. Notwithstanding the immediately preceding, DEA reserves the right, and will not be precluded by this Agreement from, issuing an Order to Show Cause to revoke or suspend any or all of the DEA registrations of Eckerd based upon any future violations of 21 U.S.C. § 801 et seq., and related regulations. Should DEA choose to file any Order or Orders to Show Cause under these circumstances, this Agreement will not preclude DEA from introducing into evidence at any administrative hearing the underlying facts serving as the basis for this Agreement in order to prove the allegations in such Order or Orders to Show Cause.

6. In consideration of the obligations of Eckerd set forth in this Agreement, conditioned upon Eckerd's payment in full of the Settlement Amount, and subject to Paragraph 9, OIG-HHS

hereby releases and agrees to refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Eckerd under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the covered conduct alleged in Paragraphs D and E above, except as reserved in Paragraph 9, and as reserved in this Paragraph. OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Eckerd from the Medicare, Medicaid or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the covered conduct alleged in Paragraphs D and E above. Nothing in this Paragraph precludes OIG-HHS from taking action against entities or persons, or for conduct or practices, for which civil claims have been reserved in Paragraph 9.

7. In consideration of the obligations of Eckerd set forth in this Agreement, conditioned upon Eckerd's payment in full of the Settlement Amount, and subject to Paragraph 9, TMA hereby releases and agrees to refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from TRICARE against the Released Parties under 32 C.F.R. § 199.9 for the covered conduct

alleged in Paragraphs D and E, except as reserved in Paragraph 9, and as reserved in this Paragraph. TMA expressly reserves authority to exclude the Released Parties from the TRICARE program under 32 C.F.R. §§ 199.9

(f)(1)(i)(A), (f)(1)(i)(B), (f)(1)(i)(D), and (f)(1)(iii), based upon the covered conduct alleged in Paragraphs D and E. Nothing in this Paragraph precludes TMA from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9.

8. In consideration of the obligations of Eckerd set forth in this Agreement, conditioned upon Eckerd's payment in full of the Settlement Amount, and subject to Paragraph 9, OPM hereby releases and agrees to refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the FEHBP program against the Released Parties under 5 U.S.C. § 8902a or 5 C.F.R. Part 970 for the covered conduct alleged in Paragraphs D and E, except as reserved in Paragraph 9 and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7(a). Nothing in this Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 9.

9. Specifically reserved and excluded from the scope and

terms of this Agreement as to any entity or person (including the Released Parties) are any and all of the following:

- i. Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- ii. Any criminal liability;
- iii. Any administrative liability, except as explicitly released in this Agreement, including mandatory exclusion from Federal health care programs under 42 U.S.C. § 1320a-7(a);
- iv. Any liability to the United States (or its agencies) for any conduct other than the covered conduct alleged in Paragraphs D and E;
- v. Any claims based upon such obligations as are created by this Agreement; or
- vi. As to ECK MD, Inc., only, any liability for exclusion from the Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (Permissive Exclusion).

C. MISCELLANEOUS PROVISIONS

10. Eckerd waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the conduct described in Paragraphs D and E,

which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in Hudson v. United States, 522 U.S. 93 (1997), and Austin v. United States, 509 U.S. 602 (1993), and agrees that the amount that Eckerd has agreed to pay under the terms of this Agreement is not punitive in effect or nature for purposes of such criminal prosecution or administrative action. Also by this Agreement, Eckerd releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which Eckerd has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the conduct covered by Paragraphs D and E, and the United States' investigation and prosecution thereof.

11. Unallowable Costs: Eckerd agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") §31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of Eckerd, in connection with:

i. the matters covered by this Agreement;

- ii. the United States' investigation of the matters covered by this Agreement;
  - iii. Eckerd's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorneys' fees and the obligations undertaken pursuant to the Corporate Integrity Agreement incorporated in this Agreement);
  - iv. the negotiation of this Agreement, the CIA and any plea agreement; and
  - v. the payment made pursuant to this Agreement are unallowable costs on Government contracts and under the Medicare, Medicaid, TRICARE, and Veterans Affairs ("VA") Programs and FEHBP (hereafter, "unallowable costs").
12. Eckerd will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Eckerd or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.
13. Except as provided herein, this Agreement is intended to be for the benefit of the Parties only, and by this instrument

the Parties do not release any claims against any other person or entity.

14. Eckerd agrees that it will not seek payment for any prescription claims covered by Paragraphs D and E of this Agreement from any health care beneficiaries or their parents or sponsors. Eckerd waives any causes of action against any beneficiaries or their parents or sponsors based upon prescription claims covered by Paragraphs D and E of this Agreement.

15. The United States and Eckerd will bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Middle District of Florida, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions in the CIA.

17. This Agreement and the CIA constitute the complete agreement between the United States and Eckerd with respect to the subject matter hereof. This Agreement may not be amended except by written consent of the Parties except that only Eckerd and OIG-HHS must agree in writing to modification of

the CIA. Separate agreements concerning the covered conduct alleged in Paragraphs D and E have been executed

(simultaneously herewith and as a condition to execution of this Agreement and the payments hereunder) between:

(1) Eckerd and the Participating States, (2) Mueller, the United States, and the State of Florida, and (3) Mueller and Eckerd.

18. Mueller agrees that the Settlement Amount is fair, adequate and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

19. This Agreement shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Eckerd or the other Released Parties.

20. Nothing in this Agreement constitutes an admission by the United States as to the correct treatment of the Settlement Amount for purposes of the Internal Revenue Code, Title 26.

21. The undersigned individuals signing this Agreement on behalf of Eckerd and the Relator represent and warrant that they are authorized to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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-DOJ CIVIL DIVISION -

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**FROM:**  
 Department of Justice  
 Civil Division  
 P.O. Box 261  
 Benjamin Franklin Station  
 Washington, D.C. 20044

Fax No. 202-305-7797  
 Voice No. 514-3403  
**SENT BY:** Liza Brennan

**TO:** Jean Kornblut

**FAX No.** 616-8460

**NUMBER OF PAGES SENT (INCLUDING COVER PAGE):**

**SPECIAL INSTRUCTIONS:**

7/29/02

Jean:

Attached is a copy of  
 the Ogilvy and Mather  
 settlement agreement. This  
 is responsive to the Crowell  
 + Moring request that I  
 sent you documents for  
 earlier today.

Liza

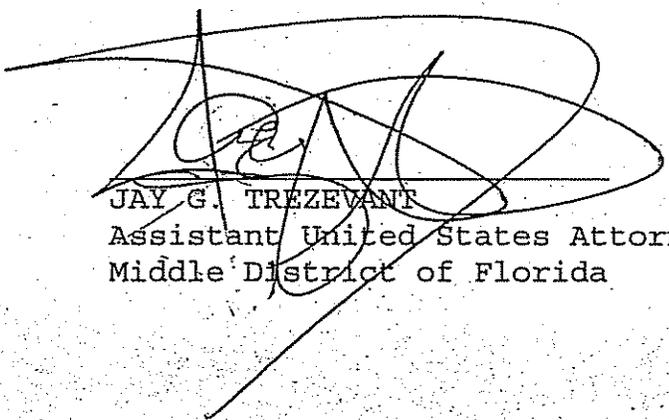
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- 22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.
- 23. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of the Settlement Agreement.
- 24. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"), and is binding on successors, transferees, heirs and assigns.

THE UNITED STATES OF AMERICA

DATED:

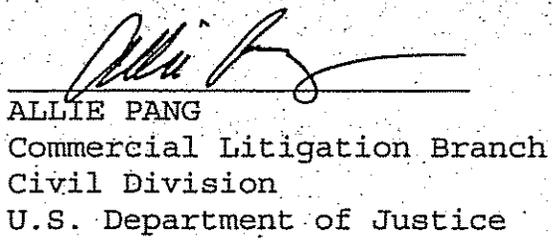
5/17/02



JAY G. TREZEWANT  
Assistant United States Attorney  
Middle District of Florida

DATED:

5/14/02

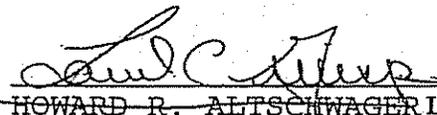


ALLIE PANG  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice

DATED: 5/16/02

L. Morris  
LEWIS MORRIS  
Assistant Inspector General  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

DATED: 02/15/2007



~~HOWARD R. ALTSCHWAGER~~ LAUREL C. GILLESPIE

Acting Deputy General Counsel  
TRICARE Management Activity  
United States Department of Defense

DATED: 2/13/02

Abby L. Block  
ABBY L. BLOCK  
Assistant Director for Insurance  
Programs  
United States Office of Personnel  
Management

DATED: February 12, 2002

E. Jeremy Hutton  
E. JEREMY HUTTON  
Assistant Inspector General for  
Legal Affairs  
United States Office of Personnel

Settlement Agreement between the  
United States of America and Eckerd Corporation

18 (JGT)

DATED:

2/11/02

Wilbur G. Corbett

WILBUR G. CORBITT

Diversion Program Manager

Drug Enforcement Administration

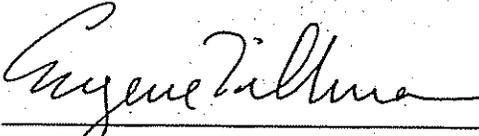
Miami Field Division

Eckerd Corporation

DATED: May 24, 2002

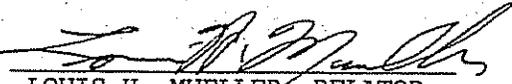
BY:   
Vice President/General Counsel

DATED: May 20, 2002

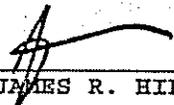
BY:   
Counsel for Eckerd Corporation

RELATOR

DATED: 5-15-02

BY:   
LOUIS H. MUELLER, RELATOR

DATED: 13 MAY 02

BY:   
JAMES R. HILBERT, JR., ESQUIRE  
Counsel for Relator  
360 Central Avenue, Suite 1490  
St. Petersburg, Florida 33701